IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 3 of 1996

in

FIRST APPEAL (STAMP NUMBER) No 4861 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARIJAN MENSI MEPA

Versus

HARIJAN SIDI KHETA

Appearance:

MR PV HATHI for Appellant No. 1
MR KL DAVE for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE JAYANT PATEL

Date of decision: 09/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. Being aggrieved by the order made by the learned Single Judge in Civil Application No. 3753 of 1992 in First Appeal (Stamp) No. 4861 of 1992, the appellants have preferred this appeal. By an order dated 13.1.1994, the learned Single Judge rejected the application submitted by the appellant under Section 5 of the Limitation Act for condonation of delay. It seems that on the ground that the appellants have abandoned the idea of preferring an appeal and after the lapse of about 9 months, they thought it fit to take a chance before the High Court by preferring appeal, the learned Single Judge arrived at a conclusion that it is a fit case where delay is not required to be condoned. No doubt that the appeal is preferred after the prescribed period of limitation. It may be noted that the appeal was preferred by the appellants as indigent persons and the order passed by the learned Single Judge was exparte order. It is contended in the application preferred under Section 5 of the Limitation Act that the applicants are illiterate and are residing at a distant village in Talaja taluka. It was further contended that with a view to earn livelihood, the applicant no. 1 who was looking after the litigation had been to Surat and/or Valsad district and was working as a labourer in the field of sugarcane. The said place was far away from the place where the applicant was residing. It is also contended that the advocate was engaged by them and applicant no. 1 did not come to know about the disposal of the suit as he was in Surat and/or Valsad district. It is also contended that the applicant no.1 was under bonafide impression that the suit was not disposed of till the inquiry was made on 1st February, 1992.

#. In view of these facts, we allow this appeal and the order made by the learned Single Judge is quashed and set aside. Resultantly, the application namely Civil Application No. 3753 of 1992 submitted by the appellants - original applicants shall be placed for admission and the learned Single Judge shall pass appropriate order in the said Civil Application.

[B.C. PATEL, J.] [PATEL, J.]

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